SINGAPORE REPORTS

LEE KIN KHEONG v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Kulasekaram and Rajah JJ.) April 20, 1978]

[Singapore — Criminal Appeal No. 5 of 1977]

Criminal Law & Procedure — Appeal — Drug-trafficking — Possession of diamorphine — Cautioned statement — Admission of — Whether trial judges erred in admitting cautioned statement — Misuse of Drugs Act 1973, ss. 2 & 3(a).

Misuse of Drugs — Drug-trafficking — Possession of diamorphine — Misuse of Drugs Act 1973, ss. 2 & 3(a).

Evidence — Cautioned statement — Admission of — Whether trial judge erred in admitting cautioned statement.

The appellant was cycling along Kallang Road when he was accosted by two Narcotics officers. He tried to make a dash into a nearby village when he was arrested by the Narcotics officers. The appellant was taken to the Central Narcotics Bureau where he was searched by a Senior Narcotics officer, Lee. On him were found two packets wrapped in Chinese newsprint. These packets were found to contain a total of 40.37 gms of diamorphine. The trial judges, after a trial within a trial, admitted in evidence a cautioned statement made by the appellant to Lee on the day of his arrest. The court rejected the contention put forth by the appellant that the diamorphine was for his own consumption and found that he was guilty of the offence of unauthorised trafficking in a controlled drug. He was sentenced to death.

One of the submissions put forth by counsel for the appellant in the appeal was that the trial judges erred in admitting the cautioned statement. It was further argued that the appellant was not given an opportunity to speak in his native dialect, i.e., Cantonese, and could not understand the contents of the statement when he signed it as it was read to him in Hokkien.

Held, dismissing the appeal: (1) there was sufficient evidence on which the trial judges could properly act in arriving at their decision to admit the appellant's cautioned statement in evidence;

(2) on the facts the appellant was properly convicted of unlawfully trafficking in a controlled drug.

CRIMINAL APPEAL.

Edwin Chan Lye Hoe (*Charles Tan Wee Beng* with him) for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the Public Prosecutor.

Wee Chong Jin C.J. (delivering the judgment of the Court): The appellant, Lee Kin Kheong, was convicted by the High Court of unlawfully trafficking in 40.37 grams of diamorphine, a controlled drug, in contravention of section 3(a) of the Misuse of Drugs Act, 1973 and sentenced to death. He now appeals against his conviction and sentence.

The facts were very simple. On April 22, 1976, acting on information received, two Narcotics officers kept observation at the junction of Kallang Road and Kampong Soopoo. At about 4.20 p.m. they saw the appellant cycling along Kallang Road towards them and as he reached that junction they rushed towards him and ordered him to stop. He abandoned his bicycle and dashed off into Kampong Soopoo but was arrested by the Narcotics officers about 150 metres from the junction.

The appellant was then taken to the Central Narcotics Bureau where he was searched by Senior Narcotics Officer Lee who found on him two packets wrapped in Chinese newsprint. One packet contained five polythene sachets and the other contained two polythene sachets of a brownish solid substance. On analysis, the substance contained in thee seven sachets was found to have a total diamorphine content of 40.37 grams. At the trial the appellant did not dispute these facts except that in cross-examination he said that he was cycling along Kampong Soopoo towards Kallang Road and when he reached the junction of those two roads he was pounced upon and arrested by two Narcotics officers.

The trial judges, after a trial within a trial, also admitted in evidence a cautioned statement made by the appellant to Senior Narcotics Officer Lee at about 5.40 p.m. on the day of his arrest. The cautioned statement reads as follows:—

"On 22nd April 1976 at 1 p.m. at Kampong Soopoo, one Malaysian Ah Hock handed over to me two newspaper wrappings of heroin and asked me to hand over the same paper wrappings to one Botak. I accepted the two newspaper wrappings and concealed them inside my underwear. I earned a commission of $15 from each sachet of heroin I received from Ah Hock. Until the time I was arrested by the authorities I had accepted the similar type of newspaper wrappings from Ah Hock on four occasions."

The appellant gave evidence on his own behalf at the trial. He said that he was a heroin addict having started smoking heroin two years before his arrest. He said he had bought the two packets containing heroin which were found on him for his own consumption for $1,190/-, a price cheaper than the usual market price. He had bought such a large quantity as at that time he happened to win $4,000/- in a lottery and when he met a drug pusher, Ah Hock, he bought from him the two packets of heroin. In cross-examination he said he had met Ah Hock first at 11 a.m. on the day of his arrest and later between 3 p.m. and 4 p.m. when he bought the heroin from Ah Hock "somewhere in Kampong Soopoo". He was on his way home after buying the heroin when he was arrested.

The trial judges disbelieved the appellant. They found that although the appellant had retracted the cautioned statement he made to Senior Narcotics Officer Lee it was a true statement and that "it showed quite clearly that by carrying the two packets of heroin on his person for the purpose of delivering it to another person, the (appellant) was guilty of an offence under section 3 of the Act of unauthorised trafficking in a controlled drug within the meaning of that expression laid down in section 2 of the Act". The trial judges in their Grounds of Decision stated that on the evidence before them they "had no doubt at all that the (appellant) was guilty of the offence of unauthorised trafficking in a controlled drug under section 3(a) of the Act".

First, it is contended that the trial judges were wrong in admitting the appellant's cautioned statement in evidence against him at the trial. When the prosecution sought to introduce the cautioned statement in evidence counsel for the appellant objected to its admissibility and accordingly a trial within a trial was conducted. As is clear from the transcript of the evidence in the Record of Appeal the objection was based on the appellant's assertion that before he

gave a statement he was asked by the officer who was going to record it in what Chinese dialect he wished to speak. He said he wished to speak in the Cantonese dialect and he wanted a Cantonese interpreter to which the officer replied that there was no Cantonese interpreter available. He then made his statement, speaking in Cantonese, which the officer recorded. After he had finished his statement he said the officer read back, speaking in the Hokkien dialect, the statement to him. He said he did not understand what the officer said as he could understand a few words in Hokkien only and that he signed the statement because he was asked to sign it and for fear he might be assaulted if he did not sign it.

The recording officer, on the other hand, gave evidence that the appellant was offered a choice and chose to speak in Hokkien. He denied that the appellant requested for a Cantonese interpreter. He said the appellant spoke fluent Hokkien and understood him when he spoke to the appellant in Hokkien. He said that after he had finished recording the appellant's statement he read it back to the appellant in Hokkien, that he invited the appellant to make any correction he wished and that the appellant said he had no correction to make after which the appellant signed the recorded statement.

The trial judges accepted the recording officer's version as to what exactly happened when the statement was recorded and found that he was speaking the truth as to the circumstances under which the statement was recorded. They also found that the statement was made voluntarily without any threat, promise or inducement.

The submission before us is that the trial judges should have found on the evidence before them that the appellant was not given an opportunity to speak in Cantonese which is his native dialect, that the appellant did not understand the contents of the statement when he signed it because he could not understand the recording officer when he read back to him in Hokkien the contents of the statement and that the appellant was under duress at the material time. We do not accept this submission. There was evidence which the trial judges could properly act on in arriving at their decision to admit the appellant's cautioned statement in evidence.

The next contention is that the trial judges erred in law in convicting the appellant under section 3(a) of the Act in that there was no evidence to support a conviction under that section. The charge on which the appellant was convicted reads:—

"You, Lee Kin Kheong, are charged that on or about the 22nd day of April 1976 at about 4.20 p.m. at Kampong Soopoo, Singapore, did unlawfully traffic in a controlled drug specified in Class A of Part I of the First Schedule of the Misuse of Drugs Act, 1973 (No. 5 of 1973), to wit, 40.37 grams of diamorphine and you have thereby committed an offence under section 3(a) of the Misuse of Drugs Act, 1973 (No. 5 of 1973), punishable under section 29 of the aforsesaid Act."

Section 3(a) of the Act reads:—

"3. Except as authorised by this Act or the regulations made thereunder, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not such other person is in Singapore to —

(a) traffic in a controlled drug."

'Traffic' is defined in section 2 of the Act to mean, *inter alia* —

"(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a) above,

otherwise than under the authority of this Act or the regulations made thereunder."

The evidence, as accepted by the trial judges, showed that the appellant was carrying on his person two newsprint wrappings, containing seven packets of a substance, which on analysis had a diamorphine content of 40.37 grams, while riding a bicycle along a public street. He had obtained these two newsprint wrappings, knowing their contents, from a person known to him as Ah Hock and was carrying them with him to deliver to a person known to him as Botak. Diamorphine is a controlled drug within the meaning of the Act. In our judgment, on these facts, and having regard to the definition of "traffic" in section 2 of the Act, the appellant was properly convicted as charged and his appeal against conviction is dismissed. As the quantity of diamorphine in which the appellant unlawfully trafficked exceeded 15 grams, his appeal against the sentence of death passed must also be dismissed.

Appeal dismissed.

Solicitors: *H.L. Chan & Co.*

RE APPLICATION BY YEE YUT EE

[O.C.J. (Choor Singh J.) June 12, 1978]

[Singapore — Originating Motion No. 30 of 1978]

Administrative Law — Certiorari — Jurisdiction of High Court — Industrial Arbitration Court — Duty to act judicially — Excess of jurisdiction — Error of law — Industrial Relations Act (Cap. 24), s. 46.

Companies — Director's personal liability — Companies Act (Cap. 185).

Labour Law — Industrial Arbitration Court — Duty to act judicially — Error of law — Acting in excess of jurisdiction — Industrial Relations Act (Cap. 24), s. 46.

The Industrial Arbitration Court made an order that the applicant as secretary and director of a limited company was personally liable for the payment of claims and debts of the company. Before the High Court it was conceded that in the order of the Industrial Arbitration Court there was a manifest error of law. The High Court considered the effect of the provisions of the Industrial Relations Act (Chapter 124) section 46 (the ouster of jurisdiction clause in the statute) and the jurisdiction of the High Court to correct the error of the statutory tribunals.

Held: (1) provisions similar to section 46 of the Industrial Relations Act have been labelled "no *certiorari*" clauses or "ouster clauses" and have been dealt with in many reported cases. The cases show that when the right to *certiorari* had been expressly taken away by statute the court relied upon the proposition that Parliament could not have intended a tribunal of limited jurisdiction to be permitted to exceed its authority without the possibility of direct correction by a superior court. It has been held that *certiorari* would issue, notwithstanding the presence of words taking away the right to apply for it, if the inferior tribunal was improperly constituted or if it lacked or exceeded jurisdiction, or failed to comply with essential preliminaries, or if a conviction or order had been procured by fraud or collusion or where there had been a breach of the rules of natural justice;